



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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KRISTINE CAZADD  
Executive Director

February 16, 2012

Dear Interested Party:

Enclosed is the Initial Discussion Paper on Staff's draft Regulation on *Transfers of Cigarette and Tobacco Products Between Retail Stores Owned by the Same Person* and amendments to existing Cigarette and Tobacco Products Licensing Act Regulations 4601, 4603, 4604, and 4605. Discussion regarding the regulation and amendments is scheduled for the Board's June 26, 2012, **Business Taxes Committee** meeting.

However, before the regulation and amendments are presented at the Business Taxes Committee meeting, staff would like to provide interested parties an opportunity to discuss the issue and present any suggested changes or comments. Accordingly, a meeting is scheduled in **Room 122 at 10:00 a.m. on March 6, 2012**, at the Board of Equalization; 450 N Street; Sacramento, California.

If you are unable to attend the meeting but would like to provide input for discussion at the meeting, please send your submission to the above address or fax to (916) 324-2554 before the March 6, 2012, meeting. If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting. In addition, please feel free to publish this information on your website or otherwise distribute it to your association or members.

If you plan to attend the meeting or would like to participate via teleconference, please let staff know by contacting Mr. Phillip Bishop at (916) 327-6440 or by e-mail at [Phil.Bishop@boe.ca.gov](mailto:Phil.Bishop@boe.ca.gov) prior to March 2, 2012. This will allow us to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing.

Whether or not you are able to attend the above interested parties' meeting, please keep in mind that the due date for interested parties to provide written responses for consideration on this topic is March 20, 2012. Please be aware that copies of your submission may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

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Thank you for your consideration. I look forward to your comments and suggestions. Should you have any questions, please feel free to contact Mr. Phillip Bishop, at (916) 327-6440.

Sincerely,

Lynn Bartolo  
Chief, Special Taxes and Fees Division  
Property and Special Taxes Department

LB: pb

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District  
Honorable Michelle Steel, Vice Chair, Third District  
Honorable Betty T. Yee, Member, First District (MIC 71)  
Senator George Runner (Ret.), Member, Second District (MIC 78)  
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel  
(via e-mail)  
Ms. Regina Evans, Board Member's Office, Fourth District  
Mr. Robert Thomas, Board Member's Office, Fourth District  
Mr. Joel Angeles, Board Member's Office, Third District  
Mr. Neil Shah, Board Member's Office, Third District  
Mr. Tim Treichelt, Board Member's Office Third District  
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Ms. Kristine Cazadd  
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Mr. David Levine  
Mr. Stephen Smith  
Ms. Christine Bisuata  
Mr. Todd Gilman  
Mr. Robert Ingenito Jr.  
Mr. Randy Silva  
Ms. Susanne Buehler  
Mr. Phillip Bishop

# INITIAL DISCUSSION PAPER

## Proposed New Regulation and Amendments to Cigarette and Tobacco Products Licensing Act Regulations 4601, 4603, 4604, and 4605

### Issue

Should the Board of Equalization (Board) authorize publication of a new regulation to provide guidelines on the documentation and retention requirements for transfers of cigarette and tobacco products between retail stores owned by the same legal entity?

In addition, should the Board amend existing regulations to clarify the issuance of a notice of suspension and notice of revocation, and to allow flexibility in reducing a suspension period?

### Background

Proposed new Regulation regarding Transfers of Cigarette and Tobacco Products between Retail Stores owned by the Same Legal Entity:

Based on several recent citations and related appeals proceedings involving the seizure of cigarette and tobacco products due to a retailer's failure to maintain proper documentation supporting the transfer of product from one licensed retail location to another licensed retail location owned by the same legal entity, the Special Taxes and Fees Division was asked to develop a new regulation to formalize documentation requirements for the transfer of cigarette and tobacco products between licensed retail locations owned by the same legal entity. Transfers of cigarette and tobacco products between licensed retail locations owned by the same legal entity do not include sales of cigarette and tobacco products between licensed retail locations prohibited by Revenue and Taxation Code section 30478.

Amendments to Regulations 4601, 4603, 4604, and 4605

In addition to the proposed new regulation, staff recommends amendments to the following Cigarette and Tobacco Products Licensing Act Regulations:

- Regulation 4601, *Service of a Notice of Violation or Warning Notice*, to provide guidance to licensees and other stakeholders in regard to the issuance of a Notice of Suspension and a Notice of Revocation;
- Regulation 4603, *Penalties for Licensed or Unlicensed Retailers*; Regulation 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*; and Regulation 4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers*, to allow flexibility in reducing a suspension period within a range of zero (0) days to twenty (20) days.

### Discussion

On October 12, 2003, the State of California enacted the Cigarette and Tobacco Products Licensing Act (Act) (Assembly Bill 71, Horton [Chapter 890, Statutes 2003]) which established a statewide licensing program under Division 8.6 (commencing with section 22970) of the

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California Business and Professions Code. The Act imposes licensing requirements on all retailers, wholesalers, and distributors of cigarettes and tobacco products and all manufacturers and importers of cigarettes. These licensing requirements are in addition to other permits and licenses that may be required depending on a person's business operations. The Act, which is intended to decrease tax evasion on the sales of cigarettes and tobacco products in California, also includes provisions for new recordkeeping requirements, identifies violations that may result in license suspensions and revocations and the imposition of civil and criminal penalties, and authorizes Board staff to inspect and seize any untaxed cigarettes or tobacco products. Inspections are performed by the Board's Investigations Division and its findings may result in the issuance of citations and penalties for violations.

The Act authorizes the Board to administer and enforce the provisions of the Act and to prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of the Act's provisions. Since the inception of the Act, the Board has prescribed and adopted regulations to clarify the provisions with the intent to uniformly administer and enforce the provisions of the Act, and to provide guidance and clarity of the Act's provisions to licensed and unlicensed cigarette and tobacco product retailers, wholesalers, distributors, manufacturers, and importers.

#### **Proposed New Regulation**

The proposed new regulation is consistent with current Board practices and procedures and is intended to provide for consistent enforcement of the documentary requirements regarding transfers of cigarette and tobacco products between retail locations owned by the same legal entity. In addition, the new regulation will provide retailers with the information regarding the required documentation for these types of transfers so as to avoid seizures of the transferred products, along with avoiding citations and fines that may be assessed against the retailer for improper documentation of these transfers.

Furthermore, in April 2011, Board staff provided guidance on these activities through an update to Publication 78, *Sales of Cigarettes and Tobacco Products in California* and a letter sent to legal entities owning multiple cigarette and tobacco products licensed retail locations.

A draft of the proposed regulation is attached (Exhibit 1).

#### **Proposed Amendments to Existing Regulations**

##### **1. Regulation 4601, Service of a Notice of Violation or Warning Notice**

The provisions of the Act and Regulations do not provide formal guidance with regard to the service of a Notice of Suspension or Notice of Revocation. In April 2006, Regulation 4601 was adopted to provide guidance regarding the requirements for the proper service of a Notice of Violation or Warning Notice. Currently, Notices of Suspension and

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Notices of Revocation are issued in the same manner as required for the service of a Notice of Violation or Warning Notice.

Amending Regulation 4601 to also include guidance regarding the issuance of Notices of Suspension or Notices of Revocation will provide the regulatory authority needed to establish formal uniform procedures and guidance for the proper issuances of Notices of Suspension and Notices of Revocation by the Board. The proposed amendments to Regulation 4601 will provide guidance to licensees and other stakeholders in regards to the issuance of a Notice of Suspension and a Notice of Revocation.

A draft of the proposed amendment to Regulation 4601 is attached (Exhibit 2).

#### **2. Regulation 4603, Penalties for Licensed or Unlicensed Retailers.**

The Act allows the Board, in addition to any applicable fines or penalties for a violation of the licensing provisions, upon first finding of a violation by a licensee, to suspend a license for up to 30 days. Upon notice of the suspension by the Board, the licensee shall immediately cease the sale of cigarettes or tobacco products until completion of the suspension period.

In April 2006, Regulation 4603 was adopted to provide guidance regarding the assessment of penalties for a first offense of a violation and for subsequent violations of the Act by a licensed or unlicensed retailer which would result in the issuance of a Warning Notice, suspension or revocation. Regulation 4603 subdivision (f) provides that a reduction in the length of a suspension period may be warranted if mitigating circumstances are present as set forth in Regulation 4606. Mitigating circumstances can be determined upon appeal at the Special Tax and Fees Division (which includes the former Excise Taxes Division) or Appeals Division level.

Pursuant to Regulation 4606, factors including, but not limited to, the following may be considered for purposes of determining whether mitigating circumstances exist to warrant a reduction in the length of a suspension period:

- (a) How recently the licensee purchased the business or began operations and acquired inventory of cigarettes and/or tobacco products.
- (b) The amount of cigarettes without stamps and with counterfeit tax stamps in relation to the size of the licensee's overall inventory.
- (c) The size of the licensee's cigarette and/or tobacco product business.
- (d) The retail value of any cigarettes or tobacco products seized.
- (e) An absence of prior seizures.

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### **Proposed New Regulation and Amendments to Cigarette and Tobacco Products Licensing Act Regulations 4601, 4603, 4604, and 4605**

Currently, if a suspension period is reduced, Regulation 4603 only allows the reduction of a suspension period to be set at: 0 days, 10 days or 20 days. Staff believes that the authority to be more flexible in situations involving a reduction to the length of a suspension period may be helpful in its administration of the Act.

The proposed amendment to subdivision (f) of Regulation 4603 would allow flexibility in reducing a suspension period within a range of zero (0) days to twenty (20) days. Proposed amendments also include adding references to the Business and Profession Code sections involving violations that mandate the revocation of a retailer's license and deletion of references to those Business and Profession Code sections that refer to violations which do not apply to retailers.

A draft of the proposed amendment to Regulation 4603 is attached (Exhibit 3).

#### **3. Regulation 4604, Penalties for Licensed or Unlicensed Wholesalers and Distributors.**

The Act allows the Board, in addition to any applicable fines or penalties for a violation of the licensing provisions, upon first finding of a violation by a licensee, to suspend a license for up to 30 days. Upon notice of the suspension by the Board, the licensee shall immediately cease the sale of cigarettes or tobacco products until completion of the suspension period.

In December 2006, Regulation 4604 was adopted to provide guidance regarding the assessment of penalties for a first offense of a violation and for subsequent violations of the Act by licensed or unlicensed wholesalers and distributors which would result in the issuance of a Warning Notice, suspension or revocation. Mitigating circumstances can be determined upon appeal at the Special Tax and Fees Division (which includes the former Excise Taxes Division) or Appeals Division level.

Regulation 4604 subdivision (f) provides that a reduction in the length of a suspension period may be warranted if mitigating circumstances are present as set forth in Regulation 4606.

Pursuant to Regulation 4606, factors including, but not limited to, the following may be considered for purposes of determining whether mitigating circumstances exist to warrant a reduction in the length of a suspension period:

- (a) How recently the licensee purchased the business or began operations and acquired inventory of cigarettes and/or tobacco products.
- (b) The amount of cigarettes without stamps and with counterfeit tax stamps in relation to the size of the licensee's overall inventory.
- (c) The size of the licensee's cigarette and/or tobacco product business.

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- (d) The retail value of any cigarettes or tobacco products seized.
- (e) An absence of prior seizures.

Currently, if a suspension period is reduced, Regulation 4604 only allows the reduction of a suspension period to be set at: 0 days, 10 days or 20 days. Staff believes that the authority to be more flexible in situations involving a reduction to the length of a suspension period may be helpful in its administration of the Act.

The proposed amendment to subdivision (f) of Regulation 4604 would allow flexibility in reducing a suspension period within a range of zero (0) days to twenty (20) days. Proposed amendments also include adding references to the Business and Profession Code sections involving violations that mandate the revocation of a wholesaler's or distributor's license and deletion of references to those Business and Profession Code sections that refer to violations which do not apply to wholesalers or distributors.

A draft of the proposed amendment to Regulation 4604 is attached (Exhibit 4).

#### **4. Regulation 4605, Penalties for Licensed or Unlicensed Manufacturers and Importers.**

The Act allows the Board, in addition to any applicable fines or penalties for a violation of the licensing provisions, upon first finding of a violation by a licensee, to suspend a license for up to 30 days. Upon notice of the suspension by the Board, the licensee shall immediately cease the sale of cigarettes or tobacco products until completion of the suspension period.

In December 2006, Regulation 4605 was adopted to provide guidance regarding the assessment of penalties for a first offense of a violation and for subsequent violations of the Act by licensed or unlicensed manufacturers and importers which would result in the issuance of a Warning Notice, suspension or revocation. Mitigating circumstances can be determined upon appeal at the Special Tax and Fees Division (which includes the former Excise Taxes Division) or Appeals Division level.

Regulation 4605 subdivision (e) provides that a reduction in the length of a suspension period may be warranted if mitigating circumstances are present as set forth in Regulation 4606.

Pursuant to Regulation 4606, factors including, but not limited to, the following may be considered for purposes of determining whether mitigating circumstances exist to warrant a reduction in the length of a suspension period:

- (a) How recently the licensee purchased the business or began operations and acquired inventory of cigarettes and/or tobacco products.

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- (b) The amount of cigarettes without stamps and with counterfeit tax stamps in relation to the size of the licensee's overall inventory.
- (c) The size of the licensee's cigarette and/or tobacco product business.
- (d) The retail value of any cigarettes or tobacco products seized.
- (e) An absence of prior seizures.

Currently, if a suspension period is reduced, Regulation 4605 only allows the reduction of a suspension period to be set at: 0 days, 10 days or 20 days. Staff believes that the authority to be more flexible in situations involving a reduction to the length of a suspension period may be helpful in its administration of the Act.

The proposed amendment to subdivision (e) of Regulation 4605 would allow flexibility in reducing a suspension period within a range of zero (0) days to twenty (20) days. Proposed amendments also include adding references to the Business and Profession Code sections involving violations that mandate the revocation of a manufacturer's or importer's license and deletion of references to those Business and Profession Code sections that refer to violations which do not apply to manufacturers or importers.

A draft of the proposed amendment to Regulation 4605 is attached (Exhibit 5).

#### **Summary**

Board staff proposes adoption of the new regulation and the amendments to Regulations 4601, 4603, 4604, and 4605. Licensees and other interested parties are welcome to submit comments or suggestions regarding the proposed new regulation and amendments to Regulations 4601, 4603, 4604, and 4605, and are invited to participate in the interested parties meeting scheduled for March 6, 2012.

Prepared by the Special Taxes and Fees Division, Property and Special Taxes Department

Current as of 02/7/2012



**DRAFT – Proposed Regulation XXXX**

**Transfers of Cigarette and Tobacco Products Between Retail Stores Owned by the Same Person.**

*Reference: Section 22971, 22974, 22974.3, and 22978.4, Business and Professions Code*

**(a) GENERAL.** Every retailer of cigarette and tobacco products is required to maintain purchase invoices for all cigarettes and tobacco products purchased and make those invoices available for inspection by the board or a law enforcement agency. A licensed retailer owning multiple locations who wishes to transfer cigarette and tobacco product between its licensed locations shall prepare a transfer log or document at the time of transfer and maintain the records for four years from the date of transfer. A copy of the transfer log or document, accompanied by a copy of the original purchase invoice(s) documenting the purchase of each item transferred, must be kept at both the transferring and receiving locations involved in the transfer for at least one year after the transfer.

**(b) SPECIFIC APPLICATION.** The transfer log or document shall show the following:

- (1) the transferring retail location, license information, supplier's name, invoice number, and the date the bulk cigarette and tobacco product purchase was made;
- (2) the receiving retail location(s), license information, and date the cigarette and tobacco product was transferred; and,
- (3) a legible, readable, itemized listing of cigarette and tobacco product transferred including packaging (e.g., 20 5-packs; 60-ct boxes), flavor and/or style, and quantity transferred.

**(c)** The transfer of cigarette and tobacco product shall only be allowed when the legal entity licensed as the retailer for the retail location transferring the cigarette and tobacco product is the same legal entity that is licensed as the retailer at the retail location receiving the cigarette and tobacco product. As an example, a transfer between a location licensed as a sole proprietorship and a location licensed as a partnership where the sole proprietor is one of the partners would not qualify under this section, since the same legal entity does not own both locations.

**(d)** Records of the transfer shall be made available to the board or its authorized representative for examination upon request. Failure to provide such documentation when requested can result in the seizure of the cigarette or tobacco product that is claimed to be transferred and the issuance of a citation. Transfer logs or documents created or provided after a seizure and/or citation are not acceptable and cannot be used for the return of seized product or dismissal of a violation.

**Proposed Amendments Regulation 4601, Service of a Notice of Violation or Warning Notice**

*Reference: Sections 22974.7, 22978.7, 22979.7, Business and Professions Code.*

The Notice of Suspension, Notice of Revocation, Notice of Violation or Warning Notice shall be placed in a sealed envelope, with postage paid, addressed to the licensee or unlicensed person at his or her last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, a mailbox, sub-post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a ~~Notice of Violation~~ may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure.

**Proposed Amendments Regulation 4603, Penalties for Licensed or Unlicensed Retailers**

*Reference:* Sections 22973, subdivision (a)(5), 22974, 22974.3, 22974.4, 22974.7, 22980.1, subdivisions (c), (d), (e), (g), 22980, subdivision (b), 22980.2, subdivision (a), 22980.3, subdivisions (a)(2) (d), Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a retailer has violated any provision of the Act:

**(a)** A first offense of a violation of any of the following provisions shall result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22974 (retailer's failure to retain purchase invoices).

(2) Business and Professions Code section 22980.1, subdivision (c), (d) or (e) (purchase from unlicensed person or person with suspended or revoked license).

(3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subd. (b)).

(4) Business and Professions Code section 22980.2 subdivision (a) (sales of cigarettes or tobacco products by an unlicensed person or person with suspended or revoked license).

**(b)** A first offense of a violation of any of the following provisions shall result in the issuance of a 20-day suspension:

(1) Business and Professions Code section 22973, subdivision (a)(5) (retailer's false statement on application).

(2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

**(c)** A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above, shall result in both a 30-day suspension or revocation and a fine. The fine shall be determined in accordance with Regulation 4607.

**(d)** A violation of Business and Profession Code section 22974.3 (possession of unstamped cigarettes or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during that period.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine shall be determined in accordance with Regulation 4607.

**(e)** In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be within a range of 0 days, ~~10 days, or to 20 days.~~ The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.3 subdivision (a)(2) or subdivision (a)(4), 22974.4, ~~22978.6,~~ or 22980.3, subdivision (a)(2) or subdivision (d).

DRAFT

**Proposed Amendments Regulation 4604, Penalties for Licensed or Unlicensed Wholesalers and Distributors**

*Reference:* Sections 22974.7, 22977, subdivision (a)(5), 22978.1, 22978.2, ~~22978.7~~, 22978.5, subdivision (b), ~~22978.7~~, 22979.7, 22980, subdivision (b), 22980.1, subdivisions (b), (c), (d), (e), (f), (g), 22980.2, subdivision (a), and 22980.3, subdivisions (a)(2), (d) Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a wholesaler or distributor has violated any provision of the Act:

**(a)** A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22978.1 (distributor's or wholesaler's failure to retain purchase invoices).

(2) Business and Professions Code section 22978.4, subdivision (c) (distributor's or wholesaler's (3) Business and Professions Code section 22978.5, subdivision (b) (distributor's or wholesaler's failure to retain sales records).

(4) Business and Professions Code section 22980.1, subdivision (b), (c), (d), (e) (sales to or purchases from unlicensed person or person with suspended or revoked license) or (f) (sales of cigarettes or tobacco products to retailer or wholesaler revoked or suspended until debts are clear).

(5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

**(b)** A first offense of a violation of any of the following provisions will result in the issuance of a 20-day suspension:

(1) Business and Professions Code section 22977, subdivision (a)(5) (distributor's or wholesaler's false statement on application).

(2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

(3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subd. (b)).

**(c)** A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation, and a fine. The fine shall be determined in accordance with Regulation 4607.

**(d)** A violation of Business and Profession Code section 22978.2 (possession of counterfeit stamped cigarettes by distributors, unstamped cigarettes by wholesalers or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee or unlicensed person has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during the month.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine will be determined in accordance with section 4607.

(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be within a range of 0 days, 10 days, or to 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section ~~22974.4~~, 22978.2, subdivision (a)(2) or subdivision (a)(4), ~~22978.6~~, or 22980.3, subdivision (a)(2) or subdivision (d).

**Proposed Amendments Regulation 4605, Penalties for Licensed or Unlicensed Manufacturers and Importers**

*Reference:* Sections 22974.7, ~~22978.7~~, ~~22979.4~~, 22979, subdivision (b)(1), ~~22979.4~~, 22979.5, subdivision (b), ~~22979.6~~, subdivision (c), 22979.7, 22980.1, subdivisions (a), (e), (f), 22980.2, subdivision (a), ~~22979.6~~, ~~subdivision (e)~~, ~~22980.3~~ subdivision (a)(2) (d), Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a manufacturer or importer has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22979.4 (importer's failure to retain purchase invoices on premises).

(2) Business and Professions Code section 22979, subdivision (b)(1) (participating manufacturer's false statement on certification to the Board).

(3) Business and Professions Code section 22979.5, subdivision (b) (manufacturer's or importer's failure to retain sales records on premises).

(5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

(6) Business and Professions Code section 22979.6, subdivision (c) (manufacturer's or importer's failure to comply with invoice requirements).

(b) A first offense of a violation of Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subd. (b)) shall result in a 20-day suspension.

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation and a fine.

(d) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(e) Notwithstanding subdivisions (b) through (d) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be within a range of 0 days, 10 days or to 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section ~~22974.4, 22978.6, or~~ 22980.3, subdivision (a)(2) or subdivision (d).